



HONIGMAN MILLER SCHWARTZ & COHN LLP
38500 WOODWARD AVENUE
SUITE 100
BLOOMFIELD HILLS MI 48304-5048

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APR 19 2007

In re Application of	:	OFFICE OF PETITIONS
Schonlau et al.	:	
Application No. 09/194,631	:	DECISION ON PETITION
Filed: November 30, 1998	:	
Attorney Docket No. AP8708	:	

This is a decision on the renewed petition filed on September 14, 2006, to withdraw the holding of abandonment. The petition was recently forwarded to the Office of Petitions for a decision on the merits. The Office sincerely apologizes for any inconvenience.

The application became abandoned for failure to reply timely to the nonfinal Office Action mailed on April 27, 2001, which set a three-month shortened statutory period for reply. In the absence of a timely filed response, the application became abandoned on July 28, 2001. A Notice of Abandonment was mailed on November 29, 2001.

In the present petition, petitioner requests that the Office withdraw the holding of abandonment due to non-receipt of the nonfinal Office Action mailed on April 27, 2001. The practitioner asserts that a search of the file jacket and docket records indicates that the nonfinal Office Action was not received.

PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

A review of the record indicates no irregularity in the mailing of the nonfinal Office Action, and in the absence of any irregularity in the mailing, there is a strong presumption that the nonfinal Office Action was properly mailed to the address of record. This presumption may be overcome by a showing that the nonfinal Office action was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner, stating that the practitioner did not receive the Office communication and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See MPEP 711.03(c)(I)(A). For example, if a three-month period for reply was set in the non-received Office communication, a copy of the docket report showing all replies docketed for a date three months from the mail date of the


non-received Office communication must be submitted as documentary proof of non-receipt of the Office communication. The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail (*e.g.* if the practitioner has a history of not receiving Office communications).

After reviewing the documents submitted on petition, the Office concludes that the showing of record is sufficient to warrant withdrawal of the holding of abandonment. The practitioner for applicants submitted copies of docket records where the nonfinal Office Action would have been entered had it been received and docketed. The practitioner attested to the fact that a search of the file jacket and docket records indicated that the nonfinal Office Action was not received. Accordingly, applicants presented the required showing under 37 CFR 1.181.

The petition under 37 CFR 1.181 is **GRANTED**. No petition fee is required.

Technology Center Art Unit 3745 has been advised of this decision. The matter is being referred to the Technology Center's technical support staff for mailing of a new nonfinal Office Action. The three (3) month shortened statutory time period for responding to the nonfinal Office Action will be set to run from the mailing date of the new nonfinal Office Action.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.



Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions